



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 191125–0090; RTID 0648-XA935]

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group in the Atlantic Region; Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management groups' retention limits for directed shark limited access permit holders in the Atlantic region from 36 to 55 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of 2021 or until NMFS announces via notification in the **Federal Register** another adjustment to the retention limit or a fishery closure. This retention limit adjustment affects anyone with a directed shark limited access permit fishing for LCS in the Atlantic region.

DATES: This retention limit adjustment is effective on [*insert date of filing for public inspection at the Office of the Federal Register*], through December 31, 2021, or until NMFS announces via notification in the **Federal Register** another adjustment to the retention limit or a fishery closure, if warranted.

FOR FURTHER INFORMATION CONTACT: Lauren Latchford at 301-427-8503; lauren.latchford@noaa.gov.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), its amendments, and implementing regulations (50 CFR part 635) issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The Atlantic shark fishery has separate regional (Gulf of Mexico and Atlantic) quotas for all management groups except those for blue shark, porbeagle shark, pelagic sharks (other than porbeagle or blue sharks), and the shark research fishery. The boundary between the Gulf of Mexico region and the Atlantic region is defined at § 635.27(b)(1) as a line beginning on the East Coast of Florida at the mainland at 25°20.4' N. lat., proceeding due east. Any water and land to the north and east of that boundary is considered, for the purposes of setting and monitoring quotas, to be within the Atlantic region. This inseason action only affects the aggregated LCS and hammerhead shark management groups in the Atlantic region.

Under § 635.24(a)(8), NMFS may adjust the commercial retention limits in the shark fishery during the fishing season. Before making any adjustment, NMFS must consider specified regulatory criteria (see § 635.24(a)(8)(i) through (vi)). After considering these criteria as discussed below, NMFS has concluded that increasing the retention limit for the Atlantic aggregated LCS and hammerhead management groups for directed shark limited access permit holders in the Atlantic region will allow use of available quotas for those groups. Therefore, NMFS is increasing the commercial Atlantic aggregated LCS and hammerhead shark retention limit in the Atlantic region from 36 to 55 LCS other than sandbar shark per vessel per trip.

NMFS considered the inseason retention limit adjustment criteria listed at § 635.24(a)(8)(i) through (vi), which include:

- The amount of remaining shark quota in the relevant region.

Based on dealer reports through March 19, 2021, approximately 10.8 metric tons (mt) dressed weight (dw) (23,904 lb dw), or 6 percent, of the 168.9 mt dw shark quota for the aggregated LCS management group and approximately 1.9 mt dw (4,252 lb dw), or 7 percent, of the 27.1 mt dw shark quota for the hammerhead shark management group have been harvested in the Atlantic region. This means that approximately 94 percent the aggregated LCS and 93 percent of the hammerhead shark quota remain available. NMFS is increasing the retention limit to 55 LCS other than sandbar shark per vessel per trip to facilitate the use of available quota.

- The catch rates in the relevant region.

Based on the current commercial retention limit and average catch rate, which is based on landings data from dealer reports, landings in the Atlantic region on a daily basis is low, and the overall available quota remains high. Using current catch rates and comparing them to catch rates from last year, projections indicate that landings would not reach the quota before the end of 2021. A higher retention limit authorized under this action will provide increased fishing opportunities and facilitate use of available quota in the Atlantic region.

- The estimated date of fishery closure based on projections.

If landings of either the aggregated LCS or hammerhead shark management groups reach 80 percent of their respective quotas, and those landings are projected to reach 100 percent of the quota by the end of the year, NMFS would, as required by the regulations at § 635.28(b)(3), close the aggregated LCS and hammerhead shark management groups since they are “linked quotas.” However, without the adjustment undertaken in this action, current catch rates would likely result in both management groups remaining open for the remainder of the year with quota unused at the end of the year. The higher retention limit should increase the likelihood of full utilization of the quota in the Atlantic region, while also allowing both management groups to remain open

for the remainder of the year.

- The effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments.

Increasing the retention limit for the aggregated LCS and hammerhead management groups in the Atlantic region from 36 to 55 LCS other than sandbar sharks per vessel per trip would continue to allow for fishing opportunities throughout the rest of the year consistent with objectives established in the 2006 Consolidated HMS FMP and would manage these groups within previously-established, science-based quotas, consistent with requirements in relation to preventing overfishing and rebuilding overfished stocks.

- The variations in seasonal distribution, abundance, or migratory patterns of the relevant shark species.

The directed shark fishery in the Atlantic region is composed of a mix of species, with a high abundance of aggregated LCS caught in conjunction with hammerhead sharks. Migratory patterns of many LCS in the Atlantic region indicate that sharks move farther north in the summer and then return south in the fall. However, based on dealer reports through March 19, 2021, daily landings throughout the Atlantic region has been low. Therefore, NMFS is increasing the retention limit from 36 to 55 LCS other than sandbar sharks per vessel per trip in order to provide additional opportunities for fishermen to fully utilize the quota in the entire Atlantic region.

- The effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the relevant quota.

One of NMFS's goals for the 2021 commercial shark fishery is to facilitate fishing opportunities throughout the fishing season in the Atlantic region. While dealer reports indicate that, under current catch rates, the aggregated LCS and hammerhead

shark management groups in the Atlantic region would remain open for the remainder of the year, the catch rates also indicate that the quotas would likely not be fully harvested under the current retention limit. If the harvest of these species is increased through an increased retention limit, NMFS estimates that the fishery would remain open for the remainder of the year and fishermen throughout the Atlantic region would have a reasonable opportunity to harvest a large portion of the quota.

On December 1, 2020 (85 FR 77007), NMFS announced in a final rule that the fishery for the aggregated LCS and hammerhead shark management groups for the Atlantic region would open on January 1 with a quota of 168.9 mt dw (372,552 lb dw) and 27.1 mt dw (59,736 lb dw), respectively, and a commercial retention limit of 36 LCS other than sandbar sharks per trip for directed shark limited access permit holders. NMFS explained that if it appeared that the quota is being harvested too quickly, thus potentially precluding fishing opportunities throughout the entire region (*e.g.*, if approximately 40 percent of the quota is caught at the beginning of the year), NMFS would consider reducing the commercial retention limit to 3 or fewer LCS other than sandbar sharks, and then later consider increasing the retention limit later in the year consistent with the applicable regulatory requirements. Based on dealer reports through March 19, 2021, approximately 94 of the aggregated LCS quota and 93 percent of the hammerhead shark quota remain unharvested, respectively. Commercial shark landings in the Atlantic region at this point in season are low. A higher retention limit should increase the likelihood of full utilization of available quota in the Atlantic region, while also allowing the fishery to operate for the remainder of the year.

Accordingly, as of [*insert date of filing for public inspection at the Office of the Federal Register*], NMFS is increasing the retention limit for the commercial aggregated LCS and hammerhead shark management groups in the Atlantic region for directed shark limited access permit holders from 36 to 55 LCS other than sandbar sharks per vessel per

trip. This retention limit adjustment is not the applicable limit for directed shark limited access permit holders if the vessel is properly permitted to operate as a charter vessel or headboat for HMS and is engaged in a for-hire trip, in which case the recreational retention limits for sharks and “no sale” provisions apply (§ 635.22(a) and (c)); or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is onboard, in which case the restrictions noted on the shark research permit apply.

All other retention limits in the Atlantic region remain unchanged. This retention limit will remain at 55 LCS other than sandbar sharks per vessel per trip for the rest of 2021, or until NMFS announces another adjustment to the retention limit or a fishery closure via notification in the **Federal Register**, if warranted.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

Based on recent data, NMFS has determined that landings have been very low (6 percent of the 168.9 mt dw shark quota for aggregated LCS management group and 7 percent of the 27.1 mt dw shark quota for the hammerhead management group). Delaying this action for prior notice and public comment would unnecessarily limit opportunities to harvest available aggregated LCS management group and hammerhead shark management group quotas, which may have negative social and economic impacts for U.S. fishers. This action does not raise conservation and management concerns. Adjusting retention limits does not affect the overall aggregated LCS management group

and hammerhead shark management groups quotas, and available data show the adjustment would have a minimal risk of exceeding the quotas set for the aggregated LCS and hammerhead shark management groups for the Atlantic region in the December 1, 2020 final rule (85 FR 77007). NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the quota and retention limit adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 2021.

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National Marine Fisheries Service.

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